EO: Intrastate
BYE: 28-Mar-2026

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0592

Order No. 25-UI-306375 Affirmed – Request to Reopen Denied
Order No. 25-UI-303314 Affirmed – Disqualification

PROCEDURAL HISTORY: On May 20, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the discharge (decision # L0010874569). The employer filed a timely request for hearing. On August 14, 2025, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 9, 2025. On September 9, 2025, ALJ Holmes-Swanson conducted a hearing at which claimant failed to appear, and on September 11, 2025 issued Order No. 25-UI-303314, reversing decision # L0010874569 by concluding that claimant was discharged for misconduct and was disqualified from receiving benefits effective February 23, 2025. On September 29, 2025, claimant filed an application for review of Order No. 25-UI-303314 with the Employment Appeals Board (EAB) that EAB and the Office of Administrative Hearings (OAH) treated as a request to reopen the September 9, 2025 hearing.[1] ALJ Kangas considered claimant's request, and on October 8, 2025, issued Order No. 25-UI-306375, denying the request and leaving Order No. 25-UI-303314 undisturbed.

Claimant's September 29, 2025 application for review of Order No. 25-UI-303314 was returned to EAB for review of the merits of that substantive decision.[2] On October 22, 2025, claimant filed an application for review of Order No. 25-UI-306375 with EAB. These matters come before EAB based on claimant's September 29, 2025 application for review of Order No. 25-UI-303314 (which was returned to EAB for review of the merits per OAR 471-040-0040(6)) and claimant's October 22, 2025 application for review of Order No. 25-UI-306375. EAB combined its review of Orders No. 25-UI-303314 and 25-UI-306375 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2025-EAB-0592 and 2025-EAB-0634).

WRITTEN ARGUMENT: Claimant submitted an argument on September 29, 2025 that was treated as part of her request to reopen the hearing and was admitted into the record as Exhibit 5. Claimant also

[1] *See* OAR 471-041-0060(5) (May 13, 2019) and OAR 471-040-0040(6) (February 10, 2012).

[2] *See* OAR 471-040-0040(6).

submitted an argument on October 22, 2025. Claimant did not state that she provided a copy of her October 22, 2025 argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The October 22, 2025 argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information into the hearing record as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into the hearing record. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Majic Works, LLC employed claimant as a restoration technician for their carpet cleaning company from October 2024 to February 28, 2025.

(2) The employer expected employees to strap down a bulky piece of carpet cleaning equipment, known as a portable extractor unit, when transporting it in the employer's work van. The employer also expected employees to refrain from overusing supplies, or leaving used supplies or other debris in the work van. The employer also expected employees to disclose whether they were in a romantic relationship with another employee, so that the employer could assess whether it was appropriate for such employees to work together.

(3) The employer reminded employees of the need to strap down the extractor unit every time the unit was taken to a job, and provided tie-downs in the van for that purpose. As for the rule against overuse of supplies, and leaving used supplies or other debris in the work van, the employer provided employees with check off sheets and diagrams that showed quantities of supplies to be used, where items should be stored in the van, and that the van should be free of debris. The rule requiring employees to disclose whether they were in a romantic relationship with another employee was contained in the employer's employee handbook, which claimant received and signed.

(4) In late October 2024, the employer's owner heard from other employees that claimant was in a romantic relationship with another employee. The owner asked claimant whether this was accurate, and claimant confirmed it to be the case. At that time, the owner instructed claimant that going forward, she was to immediately alert the employer if she was carrying on a romantic relationship with another employee. In late December and early January 2025, the owner heard that claimant was in a relationship with a different employee. The owner confronted claimant about the matter. Claimant confirmed that she had carried on the relationship with the different employee and did not disclose it.

(5) In January and early February 2025, claimant's supervisor had noticed a general decline in the quality of claimant's work and that claimant failed at times to appropriately communicate with customers and coworkers. On some occasions during this period, claimant overused cleaning supplies and left used cleaning supplies and other debris in the employer's work van.

(6) On February 13, 2025, the employer gave claimant a performance improvement plan. The plan called for claimant to create a standard operating procedure (SOP) for communicating with customers and coworkers, and to submit the SOP to the supervisor by February 28, 2025.

(7) On February 28, 2025, Claimant's SOP was due to be submitted to her supervisor. Claimant and her supervisor met that morning, and the supervisor expected to be presented with the SOP, but claimant did not submit anything at that time. After the morning meeting ended, the supervisor had "pretty much" decided that she would discharge claimant because of claimant's failure to submit the SOP. Transcript at

7. However, the supervisor decided to give claimant "a little bit more time towards the end of the day" to submit the SOP and determined she would raise the issue with claimant when she returned to the office from a job. Transcript at 8-9.

(8) On February 28, 2025, after the morning meeting ended, claimant went to do a job that required use of the portable extractor unit. That afternoon, after completing the job, claimant put the equipment in the back of the employer's work van without using the tie downs to strap the equipment down. Claimant then drove away, and the equipment fell backward and hit the back window of the van, cracking the window.

(9) On February 28, 2025, after claimant cracked the window, she returned to the employer's office. When claimant did so, it was near the end of the work day. At that time, claimant still had not submitted the SOP. Claimant's supervisor was preparing to meet with claimant to inform her that her employment would be terminated. However, claimant approached the supervisor and told her about the cracked window and that she had not strapped down the equipment in the work van.

(10) The supervisor reviewed the van's camera footage. After doing so, the supervisor asked claimant why she did not strap the equipment down, and claimant did not offer an explanation. The supervisor then told claimant to "go ahead and just stop everything that you're doing and . . . come and talk to me." Transcript at 8. Claimant and the supervisor then met, and the supervisor discharged claimant.

(11) Claimant subsequently filed an initial claim for benefits. On May 20, 2025, the Department issued decision # L0010874569, which allowed claimant benefits. On May 27, 2025, the employer filed a request for hearing on decision # L0010874569. On August 14, 2025, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 9, 2025.

(12) On September 9, 2025, ALJ Holmes-Swanson conducted a hearing at which claimant failed to appear, and on September 11, 2025 issued Order No. 25-UI-303314, reversing decision # L0010874569 by concluding that claimant was discharged for misconduct and was disqualified from receiving benefits effective February 23, 2025. On September 29, 2025, claimant filed a submission treated as a request to reopen the September 9, 2025 hearing. In the reopen request, claimant stated, in pertinent part, as follows:

> Hi, I'm so sorry I did not attend the hearing on Sep 9th. I was under the impression that because I requested the hearing, if I didnt attend it would be dismissed.. when I made the appeal to begin with it took so long I thought that it was already taken care of. Because they did rule in my favor.. I didn't realize nothing I did before had any impact on this case.

Exhibit 5 at 1.

CONCLUSIONS AND REASONS: Claimant's request to reopen the September 9, 2025 hearing is denied. The employer discharged claimant for misconduct.

Order No. 25-UI-306375 – Request to Reopen. ORS 657.270(5) states that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed

within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2). The party requesting reopening must state the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

Claimant failed to establish good cause to reopen the September 9, 2025 hearing. On August 14, 2025, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 9, 2025. Though claimant asserted in her reopen request that she was the party who had requested the hearing on decision # L0010874569, she was not. Rather, the employer was the party who requested the hearing on decision # L0010874569. Claimant did not show that her mistaken belief that she was the party who requested the hearing, and her decision to miss the hearing believing that the hearing would be dismissed as a result, arose from factors or circumstances beyond her reasonable control. And although it arose from a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. For these reasons, claimant did not establish good cause to reopen the September 9, 2025 hearing.

Order No. 25-UI-303314 – Discharge for Misconduct. ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. "As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct." OAR 471-030-0038(3)(a) (September 22, 2020). "'[W]antonly negligent' means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee." OAR 471-030-0038(1)(c).

In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). To be isolated, an instance of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A).

The employer met their burden to prove that they discharged claimant for misconduct. The proximate causes of the discharge were both claimant's failure to submit the SOP by the February 28, 2025 deadline to do so, and claimant's failure to strap down the extractor unit on February 28, 2025. This is because at the end of the morning meeting on that date, claimant's supervisor had "pretty much" decided that she would discharge claimant because of claimant's failure to submit the SOP. Transcript at 7. The supervisor decided to give claimant toward the end of the work day to submit the SOP, which claimant did not do. The supervisor testified that right before claimant advised the supervisor of her failure to strap down the extractor, the supervisor "was getting ready to speak with [claimant] about what was gonna occur and that . . . her employment would be terminated[.]" Transcript at 7-8. However, claimant

then informed the supervisor of the unstrapped equipment and cracked window, the supervisor reviewed the footage from the van, the supervisor asked claimant why she did not strap the extractor down, and claimant did not provide an explanation. Only after these later details did the supervisor tell claimant "go ahead and just stop everything that you're doing and, and come and talk to me," and then discharged claimant by informing her "this is gonna be your last day." Transcript at 8.

This testimony suggests that both claimant's failure to submit the SOP and failure to strap down the equipment and resulting cracked window were the incidents without which the discharge would not have occurred when it did. Therefore, they jointly represent the proximate cause and the initial focus of the discharge analysis. *See e.g. Appeals Board Decision* 12-AB-0434, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *Appeals Board Decision* 09-AB-1767, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

The employer proved by a preponderance of the evidence that claimant violated their expectation to provide an SOP by February 28, 2025, and did so with wanton negligence. The employer gave claimant a performance improvement plan on February 13, 2025 that required claimant to create an SOP for communicating with customers and coworkers, and to submit the SOP to the supervisor by February 28, 2025. On that date, claimant did not submit an SOP. Having been provided with the performance improvement plan that called for the SOP by the February 28, 2025 due date, claimant knew or should have known that failing to provide the SOP by that date would probably result in a violation of the employer's expectations. Claimant then consciously and with indifference to the consequences failed to submit the SOP by the deadline. Thus, claimant violated the employer's expectations with wanton negligence by not submitting the SOP on February 28, 2025.

The employer also proved by a preponderance of the evidence that claimant violated their expectation to strap down the portable extractor unit when transporting it in the employer's work van. Claimant knew or should have known that failing to strap down the extractor unit would probably result in a violation of the employer's expectations, as the employer reminded employees of this requirement every time the unit was taken to a job, and provided tie-downs in the van for that purpose. As tie-downs were provided in the van, and claimant offered no explanation to the supervisor for why she did not strap the unit down, claimant likely acted consciously and with indifference to the consequences of her actions in failing to secure the extractor unit. Thus, claimant violated the employer's expectations with wanton negligence by failing to strap down the portable extractor unit on February 28, 2025.

Claimant's failures to submit the SOP and strap down the extractor unit were not isolated instances of poor judgment. This is because the failures to submit the SOP and strap down the extractor unit were not single or infrequent occurrences. Rather, they were part of a pattern of other willful or wantonly negligent behavior.

First, in late October 2024 and in late December 2024 and early January 2025, respectively, claimant carried on relationships with other employees without disclosing them to the employer. The employer expected employees to disclose whether they were in a romantic relationship with another employee, so that the employer could assess whether it was appropriate for such employees to work together. This expectation was contained in the employee handbook, which claimant received and signed. The

employer's owner also reminded claimant of the need to immediately disclose such relationships after confronting her about the late October 2024 relationship. Despite this reminder, claimant proceeded to carry on the second of the two relationships without disclosing it to the employer. Thus, the record shows that claimant knew or should have known she was required to disclose these relationships, yet failed to do so consciously and with indifference to the consequences. Claimant's failures to disclose these relationships were wantonly negligent violations of the employer's expectations.

Second, in January and early February 2025, claimant sometimes overused cleaning supplies, and left used cleaning supplies and other debris in the employer's work van. Claimant was on notice that she was prohibited from overusing supplies, and from leaving used supplies or other debris in the work van because the employer provided employees with check off sheets and diagrams that showed quantities of supplies to be used, where items should be stored in the van, and that the van should be free of debris. The record shows that claimant knew or should have known the appropriate quantity of supplies to use and that leaving cleaning supplies unstowed and leaving debris in the van was prohibited. Claimant's overuse of cleaning supplies and leaving of used cleaning supplies and other debris in the employer's work van on occasions in January and early February 2025 were wantonly negligent violations of the employer's expectations. For these reasons, Claimant's failures to submit the SOP and strap down the extractor unit were part of a pattern of other willful or wantonly negligent behavior, and not isolated instances of poor judgment. Therefore, the employer's reasons for discharging claimant—failing to submit the SOP and strap down the extractor unit—were for misconduct.

For the reasons discussed above, the employer discharged claimant for misconduct. Claimant is disqualified from receiving benefits effective February 23, 2025.

DECISION: Orders No. 25-UI-303314 and 25-UI-306375 are affirmed.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: November 10, 2025

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals **within 30 days of the date of service stated above**. *See* ORS 657.282. For forms and information, visit https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。 如果您不明白本判決， 請立即聯繫就業上訴委員會。 如果您不同意此判決，您可以按照該判決結尾所寫的說明， 向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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